

In Taylor v. Progress Energy, Inc., 415 F. 3d 364 (4th Cir. 2005), the U.S. Court of Appeals for the Fourth Circuit recently held that Department of Labor regulations under the FMLA prohibit releases from being enforced in an FMLA lawsuit. The Court allowed the employee to keep the money she received in return for executing a release upon her termination of employment and to continue her lawsuit against her employer seeking damages for violation of her FMLA rights while she was employed.

Due to health problems, Barbara Taylor missed a significant amount of work. According to the summary judgment record, her employer failed properly to designate these absences as FMLA leave and improperly counted these absences against her when it made the decision to terminate her employment. Upon her termination, her employer provided her with the company's standard severance package, which included a requirement that she execute a release in return for severance benefits. She executed the release, but she then filed suit seeking damages for alleged FMLA violations.

Taylor argued that the release did not stop her from bringing the lawsuit because an FMLA regulation provides that employees "cannot waive, nor may employers induce employees to waive, their rights under [the] FMLA." The district court dismissed her claim based on a decision in the U.S. Court of Appeals for the Fifth Circuit which held that the regulation did not apply to post-termination waivers.

The Fourth Circuit disagreed with the Fifth Circuit and reversed the summary judgment that the district court had granted to Progress Energy. Agreeing with the Fifth Circuit that the language of the regulation was ambiguous, the Fourth Circuit examined the comments on the regulations when they were still only proposals rather than focusing on the language of the regulation.

When the regulations were proposals, several employers had commented that the regulation could be interpreted to prohibit post-termination waivers and should be changed to make clear that this interpretation was not available. Rejecting this suggestion and noting the FMLA was analogous to the Fair Labor Standards Act where waivers were prohibited, the DOL left the regulation unchanged. The Fourth Circuit concluded this history was positive evidence that the regulation's language prohibited post-termination release of claims, at least where not supervised by the DOL or a court. The Fourth Circuit concluded that, because the releases were prohibited, the employee could not ratify the release by keeping the money and had the right to continue the suit without returning the money.

The benefit of a release to an employer is greatly reduced when a release cannot be enforced against any lawsuit. Whether the decision will be appealed to the Supreme Court is not known. A split in the Circuits is often grounds for the Supreme Court to review an issue when the issue is significant.